

## Article - Criminal Law

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§11-208.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Child pornography” means any electronic image or visual depiction that is unlawful under § 11-207 or § 11-208 of this subtitle.

(3) “Controlled or owned”, with respect to a server or other storage device, means to be entirely owned by an interactive computer service provider or to be subject to exclusive management by an interactive computer service provider by agreement or otherwise.

(4) “Interactive computer service provider” means an entity that provides a service that provides or enables computer access via the Internet by multiple users to a computer server or similar device used for the storage of graphics, video, or images.

(b) An investigative or law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer service provider shall:

(1) contact the interactive computer service provider that controls or owns the server or other storage device where the item of alleged child pornography is located;

(2) inform the interactive computer service provider of the provisions of this section; and

(3) request that the interactive computer service provider voluntarily comply with this section and remove the item of alleged child pornography from its server or other storage device, if practicable, within 5 business days.

(c) (1) If the interactive computer service provider does not voluntarily remove the item of alleged child pornography within the time period established in subsection (b) of this section, the investigative or law enforcement officer shall apply for a court order of authorization to remove the item of alleged child pornography in accordance with Title 10, Subtitle 4 of the Courts Article.

(2) The application for a court order shall:

(i) identify the item of alleged child pornography discovered on the server or other storage device controlled or owned by an interactive computer service provider;

(ii) provide its location on the server or other storage device in the form of an Internet protocol (IP) address or uniform resource locator (URL);

(iii) state the grounds for the issuance of the order;

(iv) verify that the item of alleged child pornography resides on the server or other storage device controlled or owned by the interactive computer service provider;

(v) describe the steps taken to obtain voluntary compliance of the interactive computer service provider with this section;

(vi) inform the interactive computer service provider of its right to request a hearing on the application; and

(vii) state the name and title of the affiant.

(3) The investigative or law enforcement officer shall serve the application on the interactive computer service provider.

(4) The interactive computer service provider has the right to request a hearing before the court imposes any penalty under this section.

(d) The court shall review the application and testimony, if offered, and, upon a finding of probable cause, issue an order that:

(1) an item of child pornography resides on a server or other storage device controlled or owned by the interactive computer service provider or is accessible to persons located in the State;

(2) there is probable cause to believe that the item violates § 11-207 or § 11-208 of this subtitle;

(3) the interactive computer service provider shall remove the item residing on a server or other storage device controlled or owned by the interactive computer service provider within 5 business days after receiving the order, if practicable;

(4) failure of the interactive computer service provider to comply with the court's order is a violation of this section;

(5) the removal of the item on the server or other storage device controlled or owned by the interactive computer service provider may not unreasonably interfere with a request by a law enforcement agency to preserve records or other evidence;

(6) the process of removal shall be conducted in a manner that prevents the removal of images, information, or data not otherwise subject to removal under this section; and

(7) provides the interactive computer service provider notice and opportunity for a hearing before the court imposes any penalty under this section.

(e) (1) The Office of the State's Attorney shall serve the court's order on the interactive computer service provider.

(2) The order shall be accompanied by:

(i) the application made under subsection (c) of this section;

(ii) notification requiring the interactive computer service provider to remove the item residing on a server or other storage device controlled or owned by the interactive computer service provider, if practicable, within 5 business days after receiving the order;

(iii) notification of the criminal penalties for failure to remove the item of child pornography;

(iv) notification of the right to appeal the court's order; and

(v) contact information for the Office of the State's Attorney.

(f) An interactive computer service provider who is served with a court order under subsection (e) of this section shall remove the item of child pornography that is the subject of the order within 5 business days after receiving the court order, if practicable.

(g) (1) An interactive computer service provider may petition the court for relief for cause from an order issued under subsection (d) of this section.

(2) The petition may be based on considerations of:

(i) the cost or technical feasibility of compliance with the order; or

(ii) the inability of the interactive computer service provider to comply with the order without also removing data, images, or information that are not subject to this section.

(h) (1) (i) Subject to subparagraph (ii) of this paragraph, an interactive computer service provider shall report the location of an item of child pornography to the State Police if the item of child pornography:

1. resides on a server or other storage device that is:
  - A. controlled or owned by the interactive computer service provider; and
  - B. located in the State; or
2. based on information apparent to the provider at the time of the report or discovery of an item of child pornography, pertains to a subscriber or user of the interactive computer service who resides in the State.

(ii) Subparagraph (i) of this paragraph does not apply to an interactive computer service provider if:

1. federal law expressly provides for or permits the referral of a report of an item of child pornography to a state or local law enforcement agency; and
2. the interactive computer service provider complies with the federal law.

(2) An interactive computer service provider who knowingly and willfully fails to report the information required under paragraph (1) of this subsection is guilty of a misdemeanor and on conviction is subject to:

- (i) for a first violation, a fine not exceeding \$5,000;
- (ii) for a second violation, a fine not exceeding \$20,000; and
- (iii) for each subsequent violation, a fine not exceeding \$30,000.

(i) An interactive computer service provider who willfully violates subsection (f) of this section is guilty of a misdemeanor and on conviction is subject to:

- (1) for a first violation, a fine not exceeding \$5,000;
- (2) for a second violation, a fine not exceeding \$20,000; and
- (3) for each subsequent violation, a fine not exceeding \$30,000.

(j) An interactive computer service provider who willfully violates subsection (f) or (h) of this section may be prosecuted, indicted, tried, and convicted in any county in or through which:

(1) the interactive computer service provider provides access to the Internet;

(2) any communication from the interactive computer service provider traveled; or

(3) the communication from the interactive computer service provider originated or terminated.

(k) (1) This section does not impose a duty on an interactive computer service provider actively to monitor its service or affirmatively to seek evidence of an item of child pornography on its service.

(2) This section does not apply to the interactive computer service provider's transmission or routing of, or intermediate temporary storage or caching of, an image, information, or data that otherwise is subject to this section.

(l) An interactive computer service provider may not be held liable for any action taken in good faith to comply with this section.

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